

APPLICANT:
Scott Holley

**REQUEST: Variance to permit a dwelling
within the required 35 foot front yard setback
in the R2 District**

HEARING DATE: June 21, 2006

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5538**

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Scott Holley

LOCATION: 6 James Avenue and Spring Street, Bel Air
Tax Map: 40 / Grid: 4F / Parcel: 137
Third (3rd) Election District

ZONING: R2 / Urban Residential District

REQUEST: A variance, pursuant to Section 267-36(B) Table V, of the Harford County Code, to permit a dwelling to encroach the 35 foot front yard setback (20 foot proposed), in the R2 District.

TESTIMONY AND EVIDENCE OF RECORD:

Mr. Holley identified his property as being a .76 acre parcel, located at the intersection of James Avenue and Spring Street. The property is presently unimproved, although Mr. Holley intends to construct a home for his family. Mr. Holley stated that Spring Street has recently been improved and two lots are now located at the end of Spring Street. Spring Street runs to the east, or right of his proposed house if one were to look at the property from its frontage along James Avenue.

Mr. Holley plans to build a 2,600 square foot house, although the lot is very severely impacted by a non-tidal wetland and an accompanying 25 foot wetland buffer to the west side of the property, or to the left as one were to look at the home from its frontage on James Avenue. It would appear from an examination of the site plan (Attachment 3 to the Staff Report), that close to two-fifths of the property is impacted by this environmental feature which precludes any sort of development within that area. The wetland areas run from James Avenue to the rear of the lot, expanding as it reaches the rear of the lot.

Mr. Holley's plan to build his home is, as a result, heavily impacted by the existence of these environmental features. Furthermore, as he is a corner lot he has to contend with a 35 foot setback from both Spring Street and James Avenue. Because of the impact of the environmental features, he needs to build his home closer to Spring Street and accordingly requests a variance to the 35 foot setback normally required, to 20 feet.

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Mr. Holley described Spring Street as being a paved County road which will access only a few homes. The house which Mr. Holley proposes to build is similar to other homes in his neighborhood. Mr. Holley has spoken to his neighbors and none has expressed any opposition. Mr. Holley plans to plant Leland Cypress along Spring Street in order to provide some screening.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune identified Spring Street as being a County road which serves only one dwelling at the present time. There appears to be one remaining lot which would be serviced by Spring Street. Essentially, Spring Street is a dead-end road. There will be very little traffic along Spring Street according to Mr. McClune. Mr. McClune agreed that Mr. Holley's property is a corner lot which is heavily impacted by non-tidal wetlands. The existence of the wetlands and the State required 25 foot wetland buffer pushes the proposed dwelling to the side. Mr. McClune recommends the granting of the variance due to the hardship suffered by the Applicant. Even with the variance the location of the house will not look out of place. All of the homes in the area have varying frontages, which results in a somewhat varied streetscape. He sees no adverse impact to any adjoining property or neighbor.

There was no testimony or evidence given in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

"Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

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- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant presents a compelling case for a variance. He owns a lot which is, in fact, a corner lot and is accordingly impacted by two 35 foot front yard setbacks, one along James Avenue and one along Spring Street. However, Spring Street only services two lots, and is a dead-end street. There will be very little traffic along Spring Street either now or in the future. Allowing the Applicant to decrease the setback from 35 feet to 20 feet along Spring Street will have no impact upon the very minimal use of Spring Street which is anticipated to occur.

The home proposed by the Applicant appears to be similar to others throughout Harford County. There appears to be nothing unusual about the proposed home. However, the lot is highly unusual in that it is not only a corner lot but also severely impacted by non-tidal wetlands which severely constrain the Applicant's buildable area, and make it necessary for him to site his house further to the Spring Street side than would be normally the case.

These unusual features result in a hardship to the Applicant in that he can not build a home similar in style and size to others throughout Harford County without the granting of what is, in fact, a very minor variance. The relief requested is the minimum necessary in order to relieve the hardship suffered by the Applicant.

There will be no adverse impact upon any adjoining property or neighbor.

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CONCLUSION:

It is, accordingly, recommended that the requested variance be granted, subject to the following:

1. The Applicant obtaining all necessary permits and inspections for the construction of the dwelling.
2. The Applicant shall provide landscaping along the Spring Street side of the property to reduce visual impacts. The Applicant shall submit a landscaping plan to the Department of Planning and Zoning for review and approval prior to the issuance of a permit.

Date: July 11, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on AUGUST 8, 2006.